

**Friends of Small Places**  
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**www.friendsofsmallplaces.org**

October 27, 2006

Elizabeth Miller Jennings, Sr. Staff Counsel  
State Water Resources Control Board  
Office of Chief Counsel  
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Sacramento, CA 95812-0100  
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Dear Ms. Jennings and State Water Resources Control Board:

**1. Name, Address, e-mail and telephone number of Petitioner:**

Friends of Small Places  
Kristen Lark, Co-founder  
PO Box 1181  
Blue Lake, CA 95525  
[ktlark@cox.net](mailto:ktlark@cox.net)

**2. The action of the California Regional Water Quality Control Board North Coast Region being petitioned:**

Subject: Issuance of Clean Water Act Section 401 Certification (Water Quality Certification) for Van Duzen River Ranch Streambank Protection Activities

File: Noble, Jack - Van Duzen River Streambank Protection Project WDID  
No. 1B06078WNHU

**3. Date on Which Regional Board Acted:**

September 28, 2006

**4. Statement of reasons the action was improper:**

**a)** Friends of Small Places ("Friends") is not convinced that the Regional Water Quality Control Board ("Regional Board") Water Quality Certification conditions are sufficient to prevent and minimize the potential for adverse water quality impacts associated with the implementation of the project.

**b)** Due to a history of lack of permits, permit violations, and enforcement actions against Noble, we believe that undue burden is placed on citizen monitoring to ensure permit compliance. As recently as October 20, 2006, a citizen complaint was made to a California Department of Fish and Game warden regarding the construction of hard points authorized by this water quality certification. The complaint cites evidence of heavy equipment in the wet channel and soil placed on the bank near the hard points during construction. This alleged action violates Condition 6: *Heavy equipment that is used to build hard points shall only be operated from the top of the streambank or from the dry gravel bar. Heavy equipment shall not enter the wet portion of the stream channel. This Water Quality Certification does not authorize installation of any temporary crossings.*, and Condition 12, *"No bark, slash, sawdust, oil or petroleum products, or other organic or earthen material, shall be allowed to enter into or be placed where it may be washed by rainfall into the waters of the State. If, at any time, an unauthorized discharge...occurs, or any water quality problem arises, the project shall cease immediately and Regional Water Board Staff shall be notified promptly."*

We do not believe that Condition 1 : *"The applicant shall notify Regional Water Board staff prior to the annual commencement of the project activities, with details regarding the schedule of operations, to allow staff the opportunity to be present onsite and to answer any public inquiries that may arise regarding the project."* is sufficient to ensure that the required construction methods will be consistently used for the duration of this 5 year permit.

**c)** While we recognize the permit does include monitoring (Conditions 8, 9, 10), we believe this requirement should have included a provision for the data collection and report submittal to be prepared by a professional consultant, such as an engineer, geologist, or hydrologist. For example, the Section 401 Certification for the 7590 Mirabel Road Seasonal Streambank Restoration Project WDID No. 1B05009WNSO issued July 18, 2005 included such a provision in Condition 7, *"Reports shall be prepared by a professional consultant with in-depth experience in wetland ecosystem creation and function, as well as wetland mitigation monitoring techniques. Reports shall be submitted to the attention of staff member Andrew Jensen."*

**d)** Due to the lack of existing monitoring data from past hard point placements, and the extensive size and duration of the project, we believe the project should have been designed by a qualified civil engineer or geologist. This would include on-the-ground staking of toe trench locations, and the toe and riverbank riprap material placement limits for each hard point location, and specification of construction material type and size. It is crucial that the hard point material be properly sized in order to minimize downstream displacement, and that hard point structures are properly located along the channel in order to minimize potential adverse impacts to water quality, riparian and fish habitat, as well as nearby unprotected private properties. The design must also take into account how the channel will continue to respond to ongoing watershed disturbances, such as the in-stream gravel extraction, and how it will respond to the streambank treatment itself and its effect on water quality. The design should address potential erosion due to the project on nearby up- and downstream properties.

Prior to beginning work, it is crucial that an evaluation is completed by a qualified civil engineer or geologist to determine if this project will, at any time, reduce the capacity of the river channel and floodway. As this is an on-going project that will likely take several years to stabilize the hard points and successfully establish vegetation, the evaluation should also determine that flood elevations will not rise anywhere on the Van Duzen River, particularly on nearby unprotected private properties, as a result of this project. The evaluation should also address the potential of the project to reduce floodplain connectivity by increasing hard point surface area along the channel.

Because there was no requirement for the applicant to retain a state licensed Professional

Engineer or Geologist, the full responsibility for the project design, construction specification, evaluation, authorization, implementation, monitoring review, and any resulting adverse impacts to neighboring unprotected properties has been assumed by Regional Board Staff.

**e)** We believe improperly cited and expired supporting environmental documents and permits were used by Regional Board Staff in the preparation of the public notice and final approval of this Water Quality Certification. The realization that we needed to ask for this documentation did not become apparent until the end of the 21 day comment period. Therefore, we did not receive the following information in time to adequately prepare comments for the Regional Board.

It was stated in the public notice and final approval for this project:

*"The applicant has obtained a Lake or Streambed Alteration Agreement (#04-0047) from the California Department of Fish and Game (CDF&G). The CDF&G, as a responsible agency for CEQA, approved the project on May 13, 2004 and filed a Notice of Determination (NOD). The NOD states that a Supplemental Environmental Impact Report was prepared for the project"*

*"The Humboldt County Planning Division, as lead agency for California Environmental Quality Act (CEQA) compliance, and The California Department of Fish and Game, as a responsible agency for CEQA, certified a Supplemental Environmental Impact Report and filed a Notice of Determination on May 13, 2004"*

The Lake or Streambed Alteration Agreement (#04-0047) expired on December 31, 2005, which is prior to the 21 day public notice period that began on July 14, 2006.

When asked for the NOD, Dean Prat, provided the following State Clearinghouse Number: SCH# 199032083. A query on The Governor's Office of Planning and Research ("OPR") website, CEQAnet Database, on SCH# 199032083 returns only references to a document description of a Lake or Streambed Alteration Agreement for Notification #03-0201, Gravel Extraction Operations on the Van Duzen River, Tributary to Eel River, Humboldt County. Further queries on the CEQAnet Database show six NOD submittals dated from July 6, 2001 to May 17, 2004 and one SIR submittal dated March 26, 1999 for SCH# 199032083 and Agreement #03-0201. All these above-mentioned submittals pertain only to Mr. Jack R. Noble's commercial gravel extraction operation on the Van Duzen River, and nothing else. CEQAnet Database queries return no submittal results for Agreement #04-0047.

A Supplemental Environmental Impact Report to the 1992 Program Environmental Impact Report on Gravel Removal from the Lower Eel River (SCH # 1992013033) was prepared for Gravel Extraction by the Van Duzen River Ranch, certified October 28, 1997. This CEQA document was not prepared to analyze any Streambank Stabilization Project, nor does it address any impacts or mitigations associated with the placement of hard points or other bank armoring, as it may relate in some way to commercial gravel mining.

**f)** We submitted comments to the Regional Board requesting this project comply with the California and Federal Wild and Scenic River Acts. Regional Board Staff addressed this comment in the response letter to Friends of Small Places, dated September 28, 2006. We believe the two paragraph description of the Wild and Scenic River classification, designation, and administration of the Van Duzen River written by Regional Staff essentially served as an informal analysis supporting Regional Board Staff's decision to approve this Water Quality Certification. Regional Board Staff recognizes this section of the Van Duzen River as only "recreational", and provided the following description: *"The Act defines 'recreational rivers' as being 'those rivers or segments of rivers that are readily accessible by road or railroad, that may have undergone some*

*impoundment or diversion in the past.*" We believe it was improper for Regional Board Staff to substitute their own informal analysis as a basis for approval, and instead they should have initiated proper consultation with the State Resources Agency and/or the National Park Service.

As we pointed out, there was no consultation by Regional Board Staff to the State Resources Agency, concerning this project or its impacts on a California Wild & Scenic River. The California Wild & Scenic Rivers Act requires consultation with the State Resources Agency prior to any project approval.

Also, there was no consultation with the National Park Service to determine consistency with the National Wild & Scenic Rivers Act. Under Section 2(a) (ii) of the National Wild and Scenic Rivers Act, primary management responsibility for private land issues lies with the state for rivers designated under that Section of the Act. However, the National Park Service is the federal agency responsible for review of federal water resource projects for Section 2(a) (ii) rivers on private lands.

Regional Board Staff also stated in the response letter to Friends, *"There are no permits specifically for involvement with Wild and Scenic Rivers and the Act confers no state or Federal authority over private land use, local zoning, or water rights."* We agree that there are no specific permits, but that does not release Regional Board Staff from seeking consultation and opinion from the proper agencies for activities on Wild and Scenic Rivers.

In other prior correspondences, the Regional Board has stated that *"The Regional Water Board does not enforce the Federal and State Wild and Scenic Rivers Acts."* (See Water Board letter to The Voice Family, dated August 31, 2005, regarding Randall Sand and Gravel, WDID No. 1B02117WNHU). However, this contention is not supported by law. In fact, the state Wild & Scenic Rivers Act was amended in 2004 and states: *"All departments and agencies of the state shall exercise their powers granted under any other provision of law in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component was included in the system. All local government agencies **shall** exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions of this chapter."* California Public Resources Code Section 5093.61 (emphasis added).

Moreover, Section 13(d) of Federal Act states that the jurisdiction of the states over waters of any stream included in a national, wild, scenic or recreational river area shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing purposes of this Act or its administration.

Thus, the Regional Board cannot issue a Water Quality Certification without first ensuring that the operations will not harm the Van Duzen River and its *"free flowing state and the rivers' extraordinary scenic, recreational, fishery and wildlife values."* These values are adversely affected by the direct, indirect and cumulative effects of extensive hard point placements that cause a restriction of the river's movement through the flood plain. The following are examples of types of developments which would generally require consultation with the National Park Service because of the potential for adverse effects on the values of a National Wild and Scenic River: levee or dike, rip-rap, bank stabilization or erosion control structure, dredging or filling, and diversion structures.

Furthermore, the hard points are an eyesore. They are clearly an artificial structure built of concrete construction debris that adversely affects the Van Duzen's scenic value. A detailed analysis of how the outstandingly remarkable values of the Van Duzen River will be protected and enhanced should be conducted prior to the approval of the Water Quality Certification.

## **5. How the petitioner is aggrieved:**

Some members of Friends own property adjacent to the project area and the Van Duzen River. Due to the issues raised above, these property owners have not been adequately assured that their property will not be adversely affected by the implementation of this project, such as by increased flooding and erosion. For example, Mr. Carlos Quilez's primary residence sits on property along the Van Duzen River that is surrounded by Noble's property and by another hard point protected ownership (Nyberg). Mr. Quilez's property is completely unprotected by any levees or hard points, and as such, is at increased risk to diverted flood water encroachment.

Other members of Friends that do not own property adjacent to the project area use the Van Duzen River for public recreation, such as fishing, rafting, and swimming. These individuals have been denied reasonable expectation of protection of public trust resource values due to lack of proper consultation under the California and Federal Wild and Scenic River Act, lack of proper and adequate CEQA documentation, and lack of sufficient and appropriate Water Quality Certification conditions, including design, review, and monitoring by licensed resource professionals hired by the applicant.

Implementation of this project causes an undue burden on citizen monitoring by the members of Friends in order to ensure permit compliance.

The Regional Board is required to provide interested persons notice and opportunity to comment on Noble's application for a Water Quality Certification. The public must be provided complete and accurate information in order to be informed of the substantive issues raised by the proposed project. At the time the Board issued noticed for Noble's project, the Lake or Streambed Alteration Agreement #04-0047 was expired, and this information regarding the expired permit was not exposed until the last day of the public comment period. Furthermore, it appears that there is no adequate CEQA documentation analyzing a Streambank Stabilization Project. This resulted in members of Friends and also the general public having been denied their right to full participation during the public comment period.

## **6. The action the petitioner requests the State Water Board to take:**

**a)** Require on-site monitoring by staff for the duration of active hard point construction each year to ensure the applicant consistently complies with Water Quality Certification conditions, as explained in Item 4.b. above;

**b)** Require project monitoring data collection and report submittal to be prepared by a professional consultant, such as an engineer, geologist, or hydrologist, as explained in Item 4.c. above;

**c)** Require a state licensed Professional Engineer or Geologist hired by the applicant to review the project design, construction specification, flood risk evaluation, implementation, and any other potential adverse impacts to neighboring unprotected properties, as explained in Item 4.d. above;

**d)** Require preparation of an environmental impact report for a streambank stabilization project on the project site, as explained in Item 4.e. above;

**e)** Require appropriate consultation under the California and Federal Wild and Scenic River Acts, as explained in Item 4.f. above;

**f)** Suspend the Water Quality Certification until all above items are completed.

**7. Statement of points and authorities for any legal issues raised in the petition, including citations to documents or hearing transcripts that are referred to:**

1. Friends of Small Places Public Comment Letter to Regional Board, dated August 3, 2006;
2. Regional Board Response to Friends of Small Places, dated September 28, 2006;
3. Regional Board letter to The Voice Family on Randall Sand and Gravel, WDID No. 1B02117WNHU, dated August 31, 2005;
4. CA Dept. of Fish and Game Lake or Streambed Alteration Agreement #04-0047;
5. CA Dept. of Fish and Game Notice of Decision SCH# 199032083;
6. Supplemental Environmental Impact Report to the 1992 Program Environmental Impact Report on Gravel Removal from the Lower Eel River (SCH # 1992013033) for Gravel Extraction by the Van Duzen River Ranch, certified October 28, 1997;
7. Section 401 Certification for the 7590 Mirabel Road Seasonal Streambank Restoration Project WDID No. 1B05009WNSO, issued July 18, 2005;
8. California Wild & Scenic Rivers Act Public Resources code Sec. 5093.50 et seq;
9. National Wild & Scenic Rivers Act Public Law 90-542; 16 U.S.C. 1271-1287;
10. California Environmental Quality Act Public Resources Code Section 21000 et seq

**8. Copies of the petition have been sent to the Regional Water Board and to the discharger, if different from the petitioner:**

A copy of this petition has been sent to:

North Coast Regional Water Quality Control Board 5550  
Skylane Blvd., Suite A Santa Rosa, Ca 95403  
Attn: Diana Henriouille

Mr. Jack Noble and Mrs. Mary Noble  
P.O. Box 365 Fortuna, CA 95540

**9. Issues raised in this petition were presented to the Regional Board before the Regional Board acted, or an explanation of why the petitioner could not raise those objections before the Regional Board:**

Issues in this petition, except issue 4.e. above, were raised to the regional board in the Friends of Small Places public comment letter dated August 3, 2006.

For issue 4.e. above, as we were reviewing the documentation and preparing our comments for the Regional Board, the realization that there may be questionable supporting documentation referenced by Regional Board staff, and that we needed to ask for CEQA documentation and the Department of Fish and Game permit did not become apparent until the end of the 21 day comment period, on August 3, 2006. Therefore, we did not receive the information in time to adequately prepare comments on this issue for the Regional Board.

Thank you for your time and attention to this matter,



Kristen Lark  
Friends of Small Places